

Service Date: October 31, 1989

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	TRANSPORTATION DIVISION
of Burlington Northern Railroad)	
Company to discontinue its agency)	
operations at Froid/Homestead,)	DOCKET NO. T-9301
Montana and to dispose of the)	
depot at Froid and Homestead,)	
Montana.)	ORDER NO. 5955

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Charles C. Dearden, Murphy, Robinson, Heckathorn & Phillips, P.O. Box 759, Kalispell,
Montana 59903-0759

FOR THE COMMISSION:

Timothy R. Baker, Staff Attorney, 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

DANNY OBERG, Commissioner & Hearing Examiner

BACKGROUND

Burlington Northern Railroad Company (BN) applied to the Montana Public Service Commission (Commission) on August 24, 1988 for authority to discontinue its agency operations at Froid/Homestead and dispose of the depot facilities at Froid and Homestead, Montana.

The Commission noticed BN's application and a public hearing was held on November 16, 1988 at the Old Gym of the Froid School, Froid, Montana.

At the conclusion of the hearing the parties stipulated to a final order.

SUMMARY OF TESTIMONY

Testimony of Applicant

Testifying for BN were Charles Scheibe, Les Schefil-bine, James Whitmeyer and William Allbright.

Charles Scheibe. Mr. Scheibe is the Manager of Data Quality located in St. Paul, Minnesota. He explained that under BN's proposal, a shipper wanting service out of Froid/Homestead would contact the Centralized Billing Center (CBC) in Great Falls to order a railroad car. The customer would provide the CBC with the necessary relevant information, such as commodity, destination and shipping date. The CBC places an order with a BN car distributor, who sends a car to the customer's loading facility. BN will pick up the car when it is loaded.

The CBC operates 24 hours a day, 7 days a week. It is a computerized operation that ties into the entire BN system. The customer prepares the bill of lading, and can call the CBC toll-free. There are three options for processing the bill of lading. The customer can mail the bill of lading to Great Falls for processing, may use a power of attorney for BN to sign the bill of lading, or may put the bill of lading into a locked box at the point of pickup. The CBC is equipped to handle

both the bill of lading and way bills (a way bill is an internal document that describes the destination of the car).

James Whitmeyer. Mr. Whitmeyer is the Division Agent at the CBC facility located in Great Falls, Montana. Mr. Whitmeyer testified that there are eight clerks assigned to Great Falls. There are four clerks assigned to the day shift, three on the evening shift, and one on the night shift. Mr. Whitmeyer also testified that he had conducted a shipper meeting in the Froid/Homestead area to inform shippers of the CBC use as well as answer any questions they may have. He stated that all of the area shippers were contacted and did not oppose the application.

Les Schefilbine. Mr. Schefilbine is the trainmaster stationed in Glasgow. He testified that train service on the Opheim branch is a scheduled local on Tuesday as far as Scobey, returning on Wednesday. Mr. Schefilbine testified that the branch line is 150 miles in length, from Bainville to Opheim, with an operating speed of 35 mph to Scobey and some slow order track beyond to Opheim. Mr. Schefilbine stated that he did not contact all of the area shippers, but those which were contacted did not object to the application. Mr. Schefilbine also testified that it is the duty of the train crew to assist with spotting cars. He also added that BN had experienced, at one time, an increase in damaged grain cars, but that this situation was greatly improved. Mr. Schefilbine indicated he believed that car repair was not within an agent's duties.

William Allbright. Mr. Allbright, a senior cost analyst for BN, sponsored Exhibit B -- Accounting Exhibits for Proposal to Discontinue Agency Service at Froid/Homestead, Montana. Exhibit B shows the following cars received and forwarded at Froid/Homestead in 1985, 1986, 1987 and the first nine months of 1988.

Cars Received and Forwarded at Froid/Homestead

	1985	1986	1987	Jan-Sept 1988
Received	11	7	17	6
Forwarded	97	100	263	91

Total	108	107	280	97
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Exhibit B also contained net revenues or losses for the Froid/ Homestead agency calculated using the Belt/Carter and the BN formulas.

		Belt/Carter Formula	BN Formula
1985	\$ 36,051	\$(18,558)	
1986	20,140	(28,569)	
1987	67,101	(5,454)	
1988 (Jan-Sept)		16,974	(2,328)

Page 3 of Exhibit B shows the number of units handled and the estimated amount of time consumed performing agency work at the station at Froid/Homestead during 1987. This schedule shows a total time worked of 2,000 hours and a total time required for agency work of 308 hours, including travel time. Based on BN's estimation of the time required to do a unit of agency work, and the actual number of units of work handled, the agent at Froid/Homestead spent 19 percent of his time on agency work and travel, and 81 percent of his time was available for other work.

In addition to Exhibit B described above, Mr. All- bright also sponsored the following exhibits:

Exhibit C: A summary of agencies by state which shows that of 190 total agencies on the BN system, 37 are located in Montana. The BN system encompasses 26 states and 2 Canadian provinces.

Exhibit D: A summary of the average miles per agency by state. The exhibit shows that Montana has, on average, an agency for every 63 miles of track. The system average is one agency for every 124 miles of track.

Exhibit E: A letter from Mary Nielsen of Women Involved in Farm Economics (WIFE), indicating that she would not appear at the hearing.

On cross, Mr. Allbright stated that these exhibits, specifically Exhibit B, was prepared after the decision was made by BN to close the Froid/Homestead agency. He could not provide any system-wide productivity figures for purposes of comparison.

Testimony of Public Witnesses

Mr. James Mular, legislative director of the Transportation Communications Union (TCU) testified in opposition to the closure of the Froid/Homestead agency. He testified that he believes that public convenience and necessity require the Froid/Homestead agency to remain open. Using the Belt/Carter formula, the agency is profitable. The railroad has introduced no evidence to show that the Great Falls agency is capable of handling the increased work from Froid/Homestead, and has produced no evidence that the Great Falls CBC can adequately meet shipper needs. Mr. Mular added that he believed that the concept of "implied public convenience and necessity" should keep a profitable agency open. He also stated that there were other factors of agency service which should be considered.

Mr. Mular requested the Commission to give employee wage protection under § 69-14-1001, MCA. He also testified as to his discussions with BN personnel during the 1987 legislature regarding the amendment of § 69-14-202, MCA, and its subsequent application. Mr. Mular testified that BN indicated it would not seek the closure of any station where the agent was within two years of retirement. This policy would avoid both the bumping of junior employees and the upheaval of the agent's life. Mr. Mular testified that in return for this promise the TCU and other unions did not oppose the amendment of < 69-14-202, MCA.

Mr. Mular also stated that the agent has not been traveling to Homestead, as required by the Commission's last order dualizing Froid and Homestead.

Mr. Gregory Wallender, Froid, Montana, appeared and testified. Mr. Wallender stated that there had been two or three derailments in the area, and that the local agent had been

instrumental in helping and organizing the clean-up. He stated that some factors cannot be assigned a number, and that BN's productivity exhibits were thus inaccurate.

Mr. Curtiss L. Brenden, Manager of the Farmers Elevator Co. of Homestead, Montana, appeared and testified. He has been manager of the Farmers Elevator for the past eight years. Mr. Brenden stated that service from BN has deteriorated over the last eight years and is to the point of frustration. When he first took over as manager for the elevator in Homestead, service was provided by an agent out of Froid. The agent could be contacted with any problem, whether it was ordering of cars, information on rates, or where the train was at a certain point. If there was a problem with any car, the Froid agent was of much assistance. He would come to Homestead to work on poor quality cars so the shipment could be loaded. Approximately 98 percent of the time Mr. Brenden and the agent were able to get the car repaired.

Mr. Brenden stated that on occasion, he requested the BN car repair crew out of Williston to come up to Homestead. However, he stated that this process was costly to his place of business, as it resulted in down time waiting for next day service. He stated that he had lost business to other elevators because he could not take grain in until he finished loading.

Mr. Brenden stated that over the past few years he repaired poor quality cars himself. He called the Froid agent, but was told that he was directed not to help in this manner. Mr. Brenden added that when a car is ordered he expects that it will be ready to load the minute it is spotted. However, in many instances, this is not the case. On several of these occasions, and if the car was in bad shape, the agent from Froid would nevertheless provide assistance. Mr. Brenden stated that during the past few years he had not seen the Great Falls agents come out and provide service like the agent in Froid. Mr. Brenden added that BN is trying to convince him that its a convenience to use the centralized billing and car ordering system. He believes the convenience is only for BN. He stated that, from a shipper's standpoint, it is not a convenience to call Great Falls and receive no assistance.

Mr. Brenden gave an example of his frustration. He received five cars on a Tuesday for loading barley. He moved quickly to get as many loaded as possible so the train could take them out. He called the commission firm they were sold to in Great Falls, who in turn called the billing

to agents in Great Falls at 1:30 p.m. on Wednesday. At around 5:00 or 5:30 p.m. the train went by with approximately 16 cars, but refused to stop for the loaded cars. Mr. Brenden stated that he called the Great Falls agent, and wanted to know why they could not pick up the loaded cars. He was told that they were not billed. On Thursday Mr. Brenden called the commission firm and indicated that the cars were billed at 1:30 p.m. Wednesday afternoon. He called the Great Falls agent again, but they did not know what happened. He then tried to call the superintendent in Havre, Pat Kiem, but could not reach him. Mr. Schefflbine and Mr. Keim contacted Mr. Brenden and indicated that they would be sending up a train to pick up the five cars on Saturday. Mr. Brenden stated that he has loaded cars out on time just to watch them sit on the siding at Homestead for two weeks before being pulled out. He added that if this is service and he treated his customers in the same manner as BN is treating their shippers, he would not be in business long.

Mr. Brenden stated that other elevator managers and owners of elevators up and down the branch line believe that BN is going to get their way. He stated that he was appearing as a shipper on the Opheim Branch line to ask the Public Service Commission to step in with any authority they may have and use it. Mr. Brenden stated that they need the agent, and if they lose this link on the local level they will be finished. He does not believe it is accurate to say that the Great Falls agents do the same functions as a local agent. Mr. Brenden added that the local agent has worked for them before and done his job well, but since he was stripped of his regular duties he cannot be considered as not able to do his job or not needed.

On cross, Mr. Brenden testified that on approximately 8-12 occasions, the agent at Froid would help him with damaged cars, even though he had been directed not to do so. Mr. Brenden also stated that as to the one situation he described regarding the failure of BN to pick up loaded cars, the local agent played no part.

On cross, Mr. Brenden stated that the way-billing function had been handled through Great Falls since 1984. During this time he had experienced well over a dozen problems with billing or demurrage charges. According to Mr. Brenden, the local agent could provide assistance in this regard, with on-site verification, etc. However, the local agent had been instructed not to perform these functions. Mr. Brenden elaborated upon the problems associated with demurrage accrual and damaged freight cars. The time that he must take to repair damaged cars reduces the amount of time that is available for him to load the cars that are in good shape. This can lead to delays which results in demurrage accrual and dissatisfied customers.

On cross, Mr. Brenden indicated that he did not visit with BN officials about the proposed closure. He stated that he did attend one meeting in Wolf Point, but thought it was a waste of time. He added that his wife was contacted about the hearing on the proposed closure, but no one solicited comments from them on their opinion.

Mr. Brenden stated that the local agent provides important and current information concerning the anticipated arrival time of the local train, or new charges and rules. He added that on occasion, he has contacted the Great Falls office for such information, and they have not been helpful.

On cross, Mr. Brenden stated that he sells grain to commission firms on contract, with specific delivery times and dates, and subject to certain penalties. He added that he does not use the CBC before 8:00 a.m., or after 5:00 p.m. During the harvest season, timing is critical because the storage bins are often full and there are customers waiting. Mr. Brenden stated that it is important to keep the grain moving to waiting rail cars, or else potential customers will go elsewhere.

On cross, Mr. Brenden described several instances wherein damaged cars resulted in loading delays. Last year two damaged cars were delivered for loading. Mr. Brenden contacted Great Falls for assistance, but was told to fix the cars on his own. Repair service by BN was offered, but could not arrive until the next day which, according to Mr. Brenden, was not quick enough. Mr. Brenden explained that he could not move the cars around in his yard to load the good ones, as he did not have the proper equipment. After explaining his loading problems to the Great Falls agent, Mr. Brenden was told that he would have to wait until the following week. Mr. Brenden indicated that he had other similar experiences with damaged cars, and that a week delay was unacceptable. Finally, Mr. Brenden pointed out that if he chose to repair the damaged cars on his own, that he would still be subject to demurrage. This was verified by him with a call to the Great Falls agency.

Mr. Walter Jones, Froid, Montana, appeared and testified. Mr. Jones testified to the role of the local agent in helping with both right-of-way fires, and crossing maintenance. On cross, he stated that he was not a shipper and that during the past year there had been no right-of-way fires that he was aware of.

Mr. Don McAdoo, Froid, Montana, appeared and testified. Mr. McAdoo is the manager of the farmers elevator, and ships grain by rail on BN. He believes that the local agent is a big asset for the railroad, as it is a personal representative with whom the people can deal with face to face. Mr. McAdoo stated that he prefers using the local agent instead of Great Falls for such problems as spotting cars, grain shortages, or obtaining train information. Mr. McAdoo stated that when there is a grain shortage in the cars, the local agent fills out the appropriate forms, and makes

the necessary inspections. The Great Falls agency does not respond as well as the local agent, and sometimes, does not respond at all.

On cross, Mr. McAdoo stated that the way-billing function is handled by Great Falls and that this has been satisfactory. The local agent has helped with pursuing claims with the railroad, and has still provided many services despite the apparent transfer of responsibilities. Mr. McAdoo indicated that he believes that he has avoided penalty charges and benefited economically as a result of the local agent's assistance. He stated that in his opinion, BN should be providing these personal services to its customers, but does not. Mr. McAdoo indicated that he operates a single car facility, and can handle four cars at a time but usually needs to split the cars up with other facilities. The local agent plays an important role in car distribution under such circumstances.

On cross, Mr. McAdoo stated that the local agent has always helped with spotting the rail cars as they are delivered. This allows Mr. McAdoo to perform other duties. He also indicated that on 8-12 occasions during the last year, the local agent helped him repair damaged rail cars. Mr. McAdoo agreed that it is not always feasible to wait for the repair crew from Williston, North Dakota. As a result, he usually tries to fix any damaged car first (with the help of the local agent) before he calls the Great Falls agency.

Ms. Julie Down, Medicine Lake, Montana, appeared and testified. She emphasized the important role played by the local agent in the community, and the dedication of the local agent to the community itself.

DISCUSSION, ANALYSIS AND FINDINGS

Under §69-14-202(2), MCA, the Commission shall authorize the closure, consolidation, or centralization of a facility if a railroad demonstrates to the Commission that the facility is not required for public convenience and necessity. At the time of this application and the hearing on the application, the Commission's test for determining public convenience and necessity involved weighing the needs of shippers for rail service against the railroad's burden of maintaining agency service.

The 1989 Legislature modified § 69-14-202(2), MCA, by adding the following language:

In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service.

Since the legislature does not engage in idle acts, the Commission reads this amendment to < 69-14-202, MCA, to reflect the desire of the legislature that the Commission expand its analysis to include impacts of the proposed closure upon persons other than shippers. A review of the legislative history of this amendment supports such an interpretation.

However, the Commission need not determine in this proceeding which test should be applicable. Application of the narrower test (pre-1989 legislature) demonstrates that public convenience and necessity require the agency at Froid/Homestead to remain open.

Using the Belt/Carter formula, approved by this Commission as a fair measure of agency profitability, the agency at Froid/Homestead is profitable. In approving applications to close

profitable stations in the past, the Commission has noted that shipper testimony in such cases will be accorded great weight.

According to BN's studies the agent at the affected agency was productive only 19 percent of his paid time. The Commission notes that BN has not provided any information indicating the average productivity of station agents in Montana, or system-wide. Without such information, the Commission is unable to determine the level of productivity reasonably to be expected, and whether the affected agency is below or above the median. Further, Mr. Allbright testified that his exhibits are prepared after the decision is made to close the agency. Thus, by and large, Mr. Allbright's exhibits do not reflect any kind of systematic or consistent judgment on the part of BN's management concerning the need or lack thereof for a particular agency.

Two shippers testified in opposition to the closure. The Commission concludes from their testimony that shipper convenience would be affected by BN's proposal in this proceeding, and that service important to these shippers would be curtailed. The evidence clearly demonstrates that, despite BN's efforts to restrict the activities of the local agent, he has continued to provide an important service to local shippers. This service either cannot be provided by the Great Falls agency at all, or cannot be provided with the necessary response time or attention to detail. These services have a direct impact upon the success or failure of the shippers' businesses. When weighted against BN's interest in closing a profitable station, the Commission concludes that the balance tips in favor of keeping the Froid/Homestead agency open. The need for a local presence is so clear from the evidence in this proceeding that the Commission would be compelled to reach the same conclusion even if Froid/Homestead were not profitable.

Application of the broader (post-1989 legislature) test for public convenience and necessity merely reinforces this conclusion. Several area residents described the importance of the local agent in such matters as train derailments, right-of-way fires, and crossing maintenance.

In orders authorizing agency closures along the Opheim branch line, the Commission has noted that shared agent service along the line may be a valuable service. The Commission has encouraged BN to explore this and other options. See In the Matter of the Application to Discontinue Agency Operations at Scobey/Four Buttes, Docket No. T-9297, Order No. 5954. By this Order, the Commission recognizes that a full-time agent will be maintained at Froid/Homestead. It still may be feasible for BN to consider a shared agent service along the branch line, with the agent at Froid/Homestead serving in this capacity. Such an alternative, of course, would first need to be presented to the Commission for review and approval.

CONCLUSIONS OF LAW

1. The Public Service Commission has jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 14, MCA.
2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter as required by Title 2, Chapter 4, MCA.
3. No rule can be used to determine whether public convenience and necessity requires a given service to be performed. The facts in each case must be separately considered. See Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Board of Railroad Commissioners, 225 P.2d 346 (Mont. 1953), cert. den. 346 U.S. 823. The Commission concludes that the public convenience and necessity do not permit the elimination of agency service at Froid/Homestead, Montana.

ORDER

NOW THEREFORE IT IS ORDERED that Burlington Northern Railroad Company's application in Docket No. T-9301 to close the agency at Froid/Homestead, Montana and dispose of the depot facilities is Denied.

IT IS FURTHER ORDERED that pursuant to stipulation that this is a final order.

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this docket that were not ruled on are denied.

IT IS FURTHER ORDERED that this order be effective immediately and that a full, true and correct copy be mailed to the Applicant and all parties of record.

DONE AND DATED this 31st day of October, 1989 by a vote of 5 - 0 .

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Vice Chairman

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Purcell
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.